

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KIM SMITH,	:	
Plaintiff	:	
	:	
vs.	:	CIVIL NO. 1:CV-01-0817
	:	(Judge Caldwell)
	:	
JAMES MORGAN, et al.,	:	
Defendants	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

In this civil rights action, the pro se prisoner-plaintiff sets forth a variety of claims, the principal ones concerning medical treatment. We are considering the report of the magistrate judge and Plaintiff's objections to the report. We agree with the magistrate judge's proposed disposition of the case except for the recommendation that service be made on the lone remaining defendant, Dr. Kort, and that the matter be remanded to the magistrate judge for consideration of the claims against Dr. Kort.

The amended complaint alleges that Dr. Kort intentionally withheld treatment for Plaintiff's back and his Hepatitis C and prevented him from obtaining a C-Pap machine. These issues were addressed in the Wexford defendants' motion for summary judgment. Additionally, the claims against Dr. Kort are

time-barred; even on the date of the report, Dr. Kort could have raised the defense of the statute of limitations.

Accordingly, this 29th day of September, 2004, upon consideration of the report (doc. 151) of the magistrate judge, filed August 7, 2003, and the objections that were filed (doc. 154, 155, and 160) and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted with the exception of the recommendation as to Defendant Dr. Kort.

2. The Plaintiff's motion for temporary restraining order (doc. no. 93) is denied.

3. The Corrections' Defendants' motion for summary judgment (doc. 99), is granted.

4. The Wexford Defendants' motion for summary judgment (doc. no. 100), is granted.

5. The Clerk of Court is directed to amend the caption of this case to include the following individuals as defendants in this action: Edward Mason, Captain Glenney, Dr. Kort, Unit Manager Smith, and Counselor Dunn.

6. The Clerk of Court is directed to amend the caption of this case to terminate the following individuals as defendants in this action: K. Grove, Morgan, Morder, Bivanio, Henry, Catherine C. McVey, Kerstetter, and Wetz.

7. The Clerk of Court shall enter judgment in favor of all defendants and against Plaintiff.

8. The Clerk shall close this file.

9. Any appeal of this order would not be in good faith.

/s/William W. Caldwell
William W. Caldwell
United States District Judge